



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1478

Introduced 2/21/2007, by Rep. Daniel J. Burke

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Predatory Home Loan Practices Act. Prohibits various practices and charges in connection with home loans made to persons with respect to their primary residence. Prohibits the imposition of prepayment penalties, flipping of loans, and lender financing of credit insurance. Imposes limitations on high-cost loans. Prohibits loans unless the lender reasonably believes that the borrower is able to make scheduled payments to repay the loan without respect to the borrower's equity in the property. Authorizes a borrower to obtain damages for violations of the Act.

LRB095 06755 MJR 26869 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Predatory Home Loan Practices Act.

6 Section 5. Definitions. As used in this Act:

7 "Affiliate" means any company that controls, is controlled  
8 by, or is under common control with another company, as  
9 determined under the Federal Bank Holding Company Act of 1956  
10 (12 U.S.C. 1841 et seq.).

11 "Annual percentage rate" means the annual percentage rate  
12 for the loan calculated according to the provisions of the  
13 federal Truth-in-Lending Act (15 U.S.C. 1601, et seq.) and the  
14 regulations promulgated thereunder by the Federal Reserve  
15 Board.

16 "Bona fide loan discount points" means loan discount points  
17 knowingly paid by the borrower for the purpose of reducing, and  
18 which in fact result in a bona fide reduction of, the interest  
19 rate or time-price differential applicable to the loan,  
20 provided the amount of the interest rate reduction purchased by  
21 the discount points is reasonably consistent with established  
22 industry norms and practices for secondary mortgage market  
23 transactions.

1 "High-cost home loan" means a home loan for which the  
2 annual percentage rate of the home loan at consummation will  
3 exceed by more than 6 percentage points the weekly average  
4 yield on United States Treasury securities adjusted to a  
5 constant maturity of one year (as made available by the Federal  
6 Reserve Board) as of the week immediately preceding the week in  
7 which the interest rate for the loan is established.

8 "Home loan" means a loan, other than an open-end credit  
9 plan or a reverse mortgage transaction, in which: (i) the  
10 principal amount of the loan does not exceed the conforming  
11 loan size limit for a single-family dwelling as established  
12 from time to time by the Federal National Mortgage Association,  
13 (ii) the borrower is a natural person, (iii) the debt is  
14 incurred by the borrower primarily for personal, family, or  
15 household purposes, and (iv) the loan is secured by a mortgage  
16 or deed of trust on real estate upon which there is located or  
17 there is to be located a structure or structures, designed  
18 principally for occupancy of from one to 4 families, that is or  
19 will be occupied by the borrower as the borrower's principal  
20 dwelling.

21 "Points and fees" means:

22 (1) all items required to be disclosed under Sections  
23 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
24 Regulations, as amended from time to time, except interest  
25 or the time-price differential;

26 (2) all charges for items listed under Section

1           226.4(c)(7) of Title 12 of the Code of Federal Regulations,  
2           but only if the lender receives direct or indirect  
3           compensation in connection with the charge or the charge is  
4           paid to an affiliate of the lender; otherwise, the charges  
5           are not included within the meaning of the phrase "points  
6           and fees";

7           (3) all compensation paid directly or indirectly to a  
8           mortgage broker, including a broker that originates a loan  
9           in its own name in a tablefunded transaction, not otherwise  
10          included under item (1) or (2);

11          (4) "Points and fees" does not include (i) taxes,  
12          filing fees, recording, and other charges and fees paid or  
13          to be paid to public officials for determining the  
14          existence of or for perfecting, releasing, or satisfying a  
15          security interest and (ii) bona fide and reasonable fees  
16          paid to a person other than a lender or an affiliate of the  
17          lender or to the mortgage broker or an affiliate of the  
18          mortgage broker for any of the following: fees for flood  
19          certification; fees for pest infestation and flood  
20          determinations; appraisal fees; fees for home inspections  
21          performed prior to closing; credit reports; surveys;  
22          attorneys' fees (if the borrower has the right to select  
23          the attorney from an approved list or otherwise); notary  
24          fees; escrow charges, so long as not otherwise included  
25          under item (1); title insurance premiums; and fire  
26          insurance and flood insurance premiums, provided that the

1 conditions in Section 226.4(d)(2) of Title 12 of the Code  
2 of Federal Regulations are met.

3 "Total loan amount" means the same as the term "total loan  
4 amount" as used in Section 226.32 of Title 12 of the Code of  
5 Federal Regulations, and shall be calculated in accordance with  
6 the Federal Reserve Board's Official Staff Commentary to that  
7 provision.

8 Section 10. Prohibited acts and practices regarding home  
9 loans.

10 (a) No prepayment fees or penalties shall be contracted by  
11 the borrower and lender with respect to any home loan.

12 (b) It shall be unlawful for any lender in a home loan to  
13 finance, directly or indirectly, any credit life, credit  
14 disability, or credit unemployment insurance or any other life  
15 or health insurance premiums, however, insurance premiums  
16 calculated and paid on a monthly basis shall not be considered  
17 to be financed by the lender.

18 (c) No lender may knowingly or intentionally engage in the  
19 unfair act or practice of "flipping" a consumer home loan.  
20 "Flipping" a loan is the making of a home loan to a borrower  
21 that refinances an existing home loan when the new loan does  
22 not have reasonable, tangible net benefit to the borrower  
23 considering all of the circumstances, including the terms of  
24 both the new and refinanced loans, the cost of the new loan,  
25 and the borrower's circumstances. This provision shall apply

1 regardless of whether the loan is a high-cost home loan.

2 (d) When there is a charge in addition to the stated rate  
3 of interest payable directly or indirectly by the borrower and  
4 imposed directly or indirectly by the lender as consideration  
5 for the loan, whether paid by the borrower or the seller to a  
6 third party in connection with the loan, the charge may not  
7 exceed 3% of the total loan amount.

8 (e) No lender shall recommend or encourage default on an  
9 existing loan or other debt prior to and in connection with the  
10 closing or planned closing of a consumer home loan that  
11 refinances all or any portion of the existing loan or debt.

12 (f) As used in this Section, the term "obligor" refers to  
13 each borrower, co-borrower, cosigner, or guarantor obligated  
14 to repay a loan. A lender may not make a home loan unless the  
15 lender reasonably believes at the time the loan is consummated  
16 that one or more of the obligors, when considered individually  
17 or collectively, will be able to make the scheduled payments to  
18 repay the obligation based upon a consideration of their  
19 current and expected income, current obligations, employment  
20 status, and other financial resources (other than the  
21 borrower's equity in the dwelling which secures repayment of  
22 the loan). An obligor shall be presumed to be able to make the  
23 scheduled payments to repay the obligation if, at the time the  
24 loan is consummated, the obligor's total monthly debts,  
25 including amounts owed under the loan, do not exceed 45% of the  
26 obligor's monthly gross income as verified by the credit

1 application, the obligor's financial statement, a credit  
2 report, financial information provided to the lender by or on  
3 behalf of the obligor, or any other reasonable means.

4 Section 15. Limitations and prohibited practices for  
5 high-cost home loans.

6 (a) A high-cost home loan is subject to the following  
7 limitations and prohibited practices:

8 (1) No call provision. No high-cost home loan may  
9 contain a provision that permits the lender, in its sole  
10 discretion, to accelerate the indebtedness. This provision  
11 does not apply when repayment of the loan has been  
12 accelerated by default, pursuant to a due-on-sale  
13 provision, or pursuant to some other provision of the loan  
14 documents unrelated to the payment schedule.

15 (2) No balloon payment. No high-cost home loan may  
16 contain a scheduled payment that is more than twice as  
17 large as the average of earlier scheduled payments. This  
18 provision does not apply when the payment schedule is  
19 adjusted to the seasonal or irregular income of the  
20 borrower.

21 (3) No negative amortization. No high-cost home loan  
22 may contain a payment schedule with regular periodic  
23 payments that cause the principal balance to increase.

24 (4) No increased interest rate. No high-cost home loan  
25 may contain a provision that increases the interest rate

1 after default. This provision does not apply to interest  
2 rate changes in a variable rate loan otherwise consistent  
3 with the provisions of the loan documents, provided the  
4 change in the interest rate is not triggered by the event  
5 of default or the acceleration of the indebtedness.

6 (5) No advance payments. No high cost home loan may  
7 include terms under which more than 2 periodic payments  
8 required under the loan are consolidated and paid in  
9 advance from the loan proceeds provided to the borrower.

10 (6) No modification or deferral fees. A lender may not  
11 charge a borrower any fees or other charges to modify,  
12 renew, extend, or amend a high-cost home loan or to defer  
13 any payment due under the terms of a high cost home loan.

14 (7) No mandatory arbitration clause. No high cost loan  
15 may be subject to a mandatory arbitration clause that  
16 limits in any way the right of the borrower to seek relief  
17 through the judicial process.

18 (8) No lending without home-ownership counseling or  
19 advice from an attorney. A lender may not make a high-cost  
20 home loan without first receiving certification from a  
21 counselor approved by the United States Department of  
22 Housing and Urban Development, a state housing financing  
23 agency, or the National Credit Union Administration that  
24 the borrower has received counseling on the advisability of  
25 the loan transaction and the appropriate loan for the  
26 borrower.

1           (9) No lending without attorney representation. A  
2 lender may not make a high cost home loan unless the  
3 borrower is represented by an attorney at the closing. The  
4 attorney shall represent the borrower's interests at the  
5 closing and may be paid from the proceeds of the loan.

6           (10) No benefit from refinancing existing high-cost  
7 home loan with new high-cost home loan. A lender may not  
8 charge a borrower points, fees, or other charges in  
9 connection with a high-cost home loan if the proceeds of  
10 the high-cost home loan are used to refinance an existing  
11 high-cost home loan unless the annual percentage rate on  
12 the new loan is at least 200 basis points below the  
13 contract rate on the existing loan.

14           (11) Restrictions on home-improvement contracts. A  
15 lender may not pay a contractor under a home-improvement  
16 contract from the proceeds of a high-cost home loan other  
17 than (i) by an instrument payable to the borrower or (ii)  
18 at the election of the borrower, through a third-party  
19 escrow agent in accordance with terms established in a  
20 written agreement signed by the borrower, the lender, and  
21 the contractor prior to the disbursement.

22           (b) The provisions of this Section apply to any person who  
23 in bad faith attempts to avoid the application of this Section  
24 by (i) the structuring of a loan transaction as an open-end  
25 credit plan for the purpose and with the intent of evading the  
26 provisions of this Section when the loan would have been a

1 high-cost home loan if the loan had been structured as a  
2 closed-end loan, (ii) dividing any loan transaction into  
3 separate parts for the purpose and with the intent of evading  
4 the provisions of this Section, or (iii) any other subterfuge.

5 (c) Except as provided in subsection (d) of this Section,  
6 the making of a home loan that violates any provisions of  
7 Sections 10 and 15 of this Act is hereby declared usurious in  
8 violation of the provisions of this Act and unlawful as an  
9 unfair or deceptive act or practice in or affecting commerce.

10 The provisions of this Section apply to any person who in bad  
11 faith attempts to avoid the application of this Section by (i)  
12 the structuring of a loan transaction as an open-end credit  
13 plan for the purpose and with the intent of evading the  
14 provisions of this Section when the loan would have been a  
15 high-cost home loan if the loan had been structured as a  
16 closed-end loan, (ii) dividing any loan transaction into  
17 separate parts for the purpose and with the intent of evading  
18 the provisions of this Section, or (iii) any other subterfuge.

19 The Attorney General, the Department of Financial and  
20 Professional Regulation, or any party to a high-cost home loan  
21 may enforce the provisions of this Section. Any person seeking  
22 damages or penalties under the provisions of this Section may  
23 recover damages under either this Act or other State law, but  
24 not both.

25 (d) A lender in a high-cost home loan who, when acting in  
26 good faith, fails to comply with subsection (a) of this

1 Section, shall not be deemed to have violated this Section if  
2 the lender establishes that either: (1) Within 30 days after  
3 the loan closing and prior to the institution of any action  
4 under this Section, the borrower is notified of the compliance  
5 failure, appropriate restitution is made, and whatever  
6 adjustments are necessary are made to the loan to either, at  
7 the choice of the borrower, (i) make the high-cost home loan  
8 satisfy the requirements of subsection (a) of this Section or  
9 (ii) change the terms of the loan in a manner beneficial to the  
10 borrower so that the loan will no longer be considered a  
11 high-cost home loan subject to the provisions of this Section;  
12 or (2) the compliance failure was not intentional and resulted  
13 from a bona fide error notwithstanding the maintenance of  
14 procedures reasonably adapted to avoid errors and within 60  
15 days after the discovery of the compliance failure and prior to  
16 the institution of any action under this Section or the receipt  
17 of written notice of the compliance failure, the borrower is  
18 notified of the compliance failure, appropriate restitution is  
19 made, and whatever adjustments are necessary are made to the  
20 loan to either, at the choice of the borrower, (i) make the  
21 high-cost home loan satisfy the requirements of subsection (a)  
22 of this Section or (ii) change the terms of the loan in a  
23 manner beneficial to the borrower so that the loan will no  
24 longer be considered a high-cost home loan subject to the  
25 provisions of this Section.

1           Section 20. Assignee liability. Any subsequent holder who  
2 purchases or is otherwise assigned a mortgage referred to in  
3 this Section shall be subject to all claims and defenses, with  
4 respect to that mortgage, that the consumer could assert  
5 against the original creditor of the mortgage.

6           Section 25. Damages. If any person, corporation, or other  
7 lender knowingly violates either directly or indirectly any of  
8 the provisions described in this Act, the borrower may, recover  
9 by means of an action or defense, an amount equal to twice the  
10 total of all interest, discount, and charges determined by the  
11 loan contract or paid by the borrower, whichever is greater,  
12 plus such reasonable attorneys' fees and court costs as may be  
13 assessed by a court against the lender. Recovery by means of a  
14 defense may be had at any time after the loan is transacted.  
15 Recovery by means of an action may be had at any time within 2  
16 years after the date on which the total loan amount due under  
17 the terms of the loan contract is fully paid.

18           Section 30. Enforcement. When the Department of Financial  
19 and Professional Regulation determines that a violation of this  
20 Act has occurred, after due process, it shall withdraw the  
21 license of the violator.

22           Section 35. Applicability. This Act applies to all loans  
23 made or entered into after the effective date of this Act.